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October 16, 2007

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 7, 2007

Case Number: TSO-0495

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization¹ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be restored.

I. Background

The individual has held a DOE security clearance for many years. During a routine background investigation, the LSO learned that the individual had participated in Alcoholics Anonymous (AA) and had received some psychological counseling. This information prompted the LSO to conduct a personnel security interview (PSI) with the individual in October 2006 (2006 PSI). After the PSI, the LSO referred the individual to a DOE psychiatrist for a forensic psychiatric examination. The DOE psychiatrist examined the individual in December 2006 and memorialized her findings in a report (Psychiatric Report or Exhibit (Ex.) 12). In the Psychiatric Report, the DOE psychiatrist first opined that the individual suffers from the co-existence of a mental disorder and a substance use disorder. Ex. 12 at 18. She then explained that the individual is using alcohol to self-medicate his "reactive anxiety" and depression. *Id.* According to the DOE psychiatrist, the individual suffers from two mental conditions described in the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, Text Revised (DSM-IV-TR): a Mood Disorder, Not Otherwise Specified (NOS) and Alcohol Dependence, in Sustained Full Remission. *Id.* With regard to the Alcohol Dependence, the DOE psychiatrist opined that this mental condition is an illness which causes, or may cause, a significant defect in the

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

individual's judgment or reliability.² *Id.* At the time of the 2006 examination, the DOE psychiatrist did not believe that the individual was either rehabilitated or reformed from his Alcohol Dependence. *Id.*

In March 2007, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J respectively).³

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. On May 9, 2007, the Director of the Office of Hearings and Appeals (OHA) appointed Kimberly Jenkins-Chapman the Hearing Officer in this case. On June 15, 2007, I was appointed the substitute Hearing Officer in the case and I subsequently convened a hearing. At the hearing, nine witnesses testified. The LSO called one witness and the individual presented his own testimony and that of seven witnesses. In addition to the testimonial evidence, the LSO submitted 22 exhibits into the record; the individual tendered two exhibits.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting him an access authorization "will not endanger the common defense and security

² At the hearing, the DOE psychiatrist stated that the Mood Disorder (NOS) from which the individual suffers would not cause a significant defect in his judgment and reliability. Transcript of Hearing (Tr.) at 23.

³ Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer’s Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concern at Issue

As previously noted, the LSO cites two criteria as bases for suspending the individual’s security clearance, Criteria H and J. To support Criterion H, the LSO relies on the DOE psychiatrist’s opinion that the individual suffers from Alcohol Dependence, in Sustained Full Remission, a mental condition, which causes, or may cause, a defect in the individual’s judgment or reliability.⁴ The LSO also relies on the DOE psychiatrist’s opinion to support Criterion J in the case, and the following information: (1) the individual failed to heed his personal physician’s advice in 2005 that he attend AA; (2) the individual’s wife expressed concern about the individual’s alcohol consumption; (3) the individual lied to his wife about the extent of his alcohol usage; (4) the individual admitted that he was alcohol dependent; (5) the individual admitted that he started having a problem with alcohol in 2004; (6) the individual related that from late 2003 until 2004, he bought hard liquor and hid it at home; (7) the individual admitted that he drank one pint of vodka per day in 2003 and 2004; and (8) the individual admitted that he drank while taking antidepressant medication even though he knew that he should not combine medication with alcohol.

I find that the information set forth above constitutes derogatory information that raises questions about the individual’s mental health under Criterion H and his alcohol use under Criterion J. The security concerns associated with Criteria H and J are as follows. First, a mental condition such as Alcohol Dependence can impair a person’s judgment, reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House.

⁴ The Notification Letter appears to suggest that the DOE was citing the individual’s Mood Disorder NOS as a Criterion H concern in this case. As noted in footnote 2 *supra*, the DOE psychiatrist testified that the individual’s Mood Disorder NOS would not cause a significant defect in the individual’s judgment and reliability. Based on the DOE psychiatrist’s testimony, I find that the individual’s Mood Disorder NOS does not raise a Criterion H concern in this case.

Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

IV. Findings of Fact

Most of the relevant facts in this case are undisputed. The individual divorced his first wife in 1999. Ex. 12 at 8. The divorce and ensuing custody issues caused the individual to seek psychological counseling in 2000 to cope with his depression and anxiety. *Id.* at 9. In October 2000, the individual remarried. Transcript of Hearings (Tr.) at 103. By 2003, the individual began feeling unhappy in his second marriage. Ex. 12 at 11. Sometime in the latter part of 2003, the individual started buying vodka and hiding it at home in empty water bottles. *Id.* at 5, Ex. 21 at 47. At first, the individual took one shot of vodka every three days to relax and cope with his problems. Ex. 12 at 5. By November 2005, the individual's vodka consumption had increased to one pint per day. *Id.* During this time frame, the individual was becoming intoxicated four times each week, and reporting to work "hung over" two to three times per week. Ex. 21 at 51, 54, 60. During his periods of heavy drinking in 2005, the individual consulted with a physician and a psychologist about his excessive alcohol consumption, anxiety and depression. His physician prescribed antidepressants for him in September 2005, however, the individual continued to drink one pint of vodka a day. *Id.* at 27-29.

The individual's problematic drinking eventually caused marital conflict. On the night before Thanksgiving 2005, the individual was engaged in a telephone conversation when his wife decided to drink some water from a water bottle in the couple's home. Tr. at 107. Upon sipping what she thought was water in the water bottle, the wife quickly realized that the liquid was vodka. *Id.* The wife had long suspected that the individual had been secretly drinking in the house but the individual had denied it. *Id.* The wife reacted to her involuntary consumption of vodka by throwing the bottle at her husband and threatening to leave him. *Id.* at 107-109. The individual pleaded with his wife to give him one more chance, promising to do anything to save his marriage. *Id.* at 107. The individual enrolled in AA on Thanksgiving Day 2005 and maintains that he has not consumed any alcohol since Thanksgiving Eve 2005. Ex. 21 at 57-60.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).⁵ After due deliberation, I have determined that the individual's access authorization should be

⁵ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

restored. I find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Diagnosis of Alcohol Dependence

It is undisputed that the individual suffers from Alcohol Dependence under the criteria set forth in the DSM-IV-TR. Both the DOE psychiatrist and the individual's personal psychiatrist are in accord on this matter. Tr. at 26, 38. The pivotal question before me then is whether the individual has presented convincing evidence that he is adequately reformed or rehabilitated from his Alcohol Dependence.

B. Rehabilitation and Reformation from Alcohol Dependence

1. The Individual's Testimony and Documentary Evidence

At the hearing, the individual testified convincingly that he has not consumed alcohol since November 23, 2005, and has attended 80 AA meetings between March 27 and August 7, 2007. To corroborate his attendance at AA, the individual submitted AA sign-in sheets. *See* Ex. B. At the hearing, the individual explained that he began attending AA three to four times per week in November 2005, but only began to actively participate in AA meetings in February 2007.⁶ *Id.* According to the individual, there were three factors that caused him to renew his commitment to AA. First, he became alarmed in January 2007 when he read the Psychiatric Report and the DOE psychiatrist's description of his drinking habits. *Id.* at 126. Second, in February 2007 he consulted a psychologist at his place of employment who advised him to embrace AA. *Id.* Third, he became a patient of a psychiatrist in March 2007 who helped him understand the magnitude of his alcohol problem and the benefits of a program like AA. *Id.* at 133. The individual testified that he now attends AA four to five times per week and has an AA sponsor. *Id.* at 131, 140. He related that AA has helped him "come to grips with alcoholism" as a disease and has provided him with tools for dealing with stress in his life. *Id.* at 131, 144. In addition, the individual credited his personal psychiatrist with providing him with insight into his alcoholism. *Id.* at 142-144. Finally, the individual maintained at the hearing that he intends to "stick with the AA program" even if he does not get his clearance restored. *Id.* at 144.

2. The AA Sponsor's Testimony

The individual's AA sponsor testified that he met the individual in AA in December 2005 but only became the individual's sponsor in March or April 2007. *Id.* at 65, 67. He related that he sees the individual three to four times each week and assists the individual in working the 12-step program. *Id.* at 65-66. He stated that the individual actively

⁶ The individual testified that he attended at least 20 AA meetings between February 2007 and March 27, 2007, and many AA meetings in late 2005 and different periods in 2006. *Id.* at 129, 134-135. The individual does not have any AA sign-up sheets to verify the number of AA meetings that he attended or to corroborate his testimony in this regard.

participates in AA meetings and even serves as the chairperson of some AA meetings. *Id.* at 70.

3. The Testimony of Two Supervisors and Two Co-Workers

The two supervisors who testified at the hearing provided positive comments about the individual's work performance. *Id.* at 75, 95. Neither supervisor ever saw any evidence at work of alcohol-related issues. *Id.* One of the supervisors related that he has traveled with the individual on business eight times since August 2006, and has never observed the individual consume alcohol on any of these trips. *Id.* at 96.

One of the individual's co-workers testified that he was aware that the individual had drinking problems between 2003 and 2005. *Id.* at 87. The co-worker stated that he and the individual engage in outdoor sporting activities once per week and that he has not observed the individual drink alcohol since November 2005. *Id.* at 88. The other co-worker has had daily contact in the workplace with the individual since 2005. *Id.* at 82-83. The second co-worker testified that he has never seen any signs that the individual was drinking. *Id.*

4. The Wife's Testimony

The individual's wife testified that after discovering that her husband had been hiding vodka in water bottles around the house on Thanksgiving Eve 2005, she threatened to leave him. *Id.* at 107. According to the wife, the individual pleaded with her to give him one more chance, offering to do anything to salvage their marriage. *Id.* The wife confirmed that the individual began attending AA on Thanksgiving Day 2005 and continues to attend that support group four to five times per week. *Id.* at 115. She also related that the individual has a sponsor and reads the "Big Blue Book." *Id.* at 113. She testified that the individual talks to her about what transpires at his AA meetings and often apologizes to her for "everything." *Id.* at 115. The wife reported that since her husband has stopped consuming alcohol, he has become more thoughtful and respectful. *Id.* at 117-118. She added that they have no alcohol in the house and that the individual is rarely around people that drink. *Id.* at 115, 120. She is confident that the individual will not drink again because she has told him that she will leave him if he does. *Id.* at 108-109. Finally, the wife testified that the individual has experienced stress recently with the illness and death of his father and the illness of his mother. *Id.* at 111. She reported that these stressors did not in any way impact the individual's ability to remain abstinent. *Id.*

5. The Personal Psychiatrist's Testimony

The individual's personal psychiatrist first met with the individual in March 2007. *Id.* at 34. He encouraged the individual to actively participate in AA and helped him identify concrete tools that would assist him with relapse prevention. *Id.* at 41-44. The personal psychiatrist opined that the individual is open and willing to follow his suggestions. During their therapy sessions, the personal psychiatrist monitors the individual's progress and discusses issues relating to the individual's rehabilitation. *Id.* at 48. The personal psychiatrist is confident that the individual will not consume alcohol again. He stated that the individual's therapy is complemented by the solid network of support that the

individual has in his wife, his AA sponsor and his fellow AA participants. *Id.* at 57. The personal psychiatrist concluded by opining that the individual is rehabilitated from his Alcohol Dependence. *Id.* at 53.

6. The DOE Psychiatrist's Testimony

The DOE psychiatrist stated in her written Psychiatric Report that the individual could not be considered adequately rehabilitated until he achieved two years of sobriety, participated in AA for a 100 hours over a one-year period, and obtained an AA sponsor. After listening to the testimony of all the witnesses in the case, the DOE psychiatrist decided that the individual had demonstrated adequate evidence of rehabilitation from his Alcohol Dependence after 21 months of sobriety and his active AA participation as of the date of the hearing. *Id.* at 152. The DOE psychiatrist opined that the individual has a strong support network in his wife, his AA sponsor, his fellow AA members and his psychiatrist. *Id.* She also believed that the individual intends to continue with AA indefinitely. *Id.* In the end, the DOE psychiatrist expressed confidence that the individual will continue to sustain his abstinence. *Id.* at 152.

C. Hearing Officer Evaluation of Evidence

The evidence in this case convinces me that the individual has mitigated the Criteria H and J security concerns before me. The opinions of the DOE psychiatrist and the personal psychiatrist that the individual is rehabilitated from his Alcohol Dependence allay the Criterion H concerns surrounding the state of the individual's mental health. As for Criterion J, it is not only the two psychiatric opinions in this case but my own common-sense judgment that the individual has presented compelling evidence that he has achieved rehabilitation. Specifically, I am convinced from the individual's testimony, and that of his wife and his AA sponsor, that the individual has recognized that he is an alcoholic, has changed his attitude towards drinking, and is committed to maintaining abstinence. Furthermore, the individual provided corroborating evidence to demonstrate that he abstained from alcohol for 21 months and is committed to attending AA indefinitely. In sum, I find that the individual has provided adequate evidence that he is rehabilitated from his Alcohol Dependence. Accordingly, I find that the individual has mitigated Criterion J.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to mitigate the security concerns associated with both criteria at issue. I therefore find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored. The parties may

seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: October 16, 2007